

MACKIE WOLF ZIENTZ & MANN, P.C.
Stephen Wu
PARKWAY OFFICE CENTER, SUITE 900
14160 DALLAS PARKWAY
DALLAS, TX 75254
(214) 635-2650
(214) 635-2686 – FACSIMILE

**UNITED STATES BANKRUPTCY COURT
IN THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: Wesley Lewis Brown	§	Case No. 21-31530
	§	(Chapter 13)
	§	
Carvana, LLC, their successors and/or	§	
assigns, Creditor	§	
	§	
vs.	§	
	§	
Wesley Lewis Brown, Debtor and William E.	§	
Heitkamp, Trustee,	§	
Respondents	§	

OBJECTION TO CONFIRMATION BY CARVANA, LLC

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, Carvana, LLC (hereinafter Creditor), a secured creditor herein, and pursuant to 11 U.S.C. §§ 1322(b)(2), 1324 and 1325(a)(5), and Bankruptcy Rule 3015(f) files this, its Objection to Debtor(s) proposed Chapter 13 Plan (hereinafter Plan), and in support thereof would respectfully show the Court as follows:

I. BACKGROUND

1. Wesley Lewis Brown, the Debtor(s) (hereinafter Debtor), commenced the above captioned Chapter 13 case on 05/05/2021. William E. Heitkamp is the duly appointed and acting Chapter 13 Trustee.

2. Creditor has a perfected purchase money security interest in a 2017 Infiniti QX50 2 WD, VIN# JN1BJ0RPXHM382647.

3. The total secured claim due and owing to Creditor as of the Petition Date was \$21,293.37 as evidenced by Creditor's secured proof of claim 2-1 (hereinafter Proof of Claim) on file in this

case.

II. OBJECTION TO PROPOSED PLAN

4. Creditor objects to confirmation of the Plan because Debtor's plan proposes to pay interest on Secured Creditor's claim at 0.00%. In *Till v. SCS Credit Corp.*, *Till v. SCS Credit Corp.* 541 U.S. 465; 124 S.Ct. 1951 (2004), the Supreme Court utilized the "formula approach" to determine the proper rate of interest. This approach, outside of Bankruptcy, looks to ordinary lending practices and the national prime rate, which reflects the financial market's estimate of the amount a commercial bank would charge a creditworthy commercial borrower to compensate for the loan's opportunity costs, the inflation risk, and the relatively slight default risk. The Supreme Court has decided that a bankruptcy court is then required to adjust this to account for the greater nonpayment risk that bankrupt debtors typically pose. In order to determine the appropriate risk adjustment, factors such as the estate's circumstances, the security's nature, and the reorganization Plan's duration and feasibility must be analyzed. The Courts routinely add 2% to the national prime rate to accomplish such a risk adjustment. The resulting interest rate in this case would be 5.25%. The subject Plan does not provide Objecting Secured Creditor with any appropriate interest rate based on an appropriate risk adjustment.

5. Because Creditor was forced to file this Objection to Confirmation to protect its secured interest in the subject real property, it has incurred reasonable attorneys' fees.

WHEREFORE, PREMISES CONSIDERED, Creditor prays that this Court deny confirmation of the Plan proposed by the Debtor(s), award attorneys' fees and costs, and grant Creditor such other and further relief, at law and in equity, as is just.

Respectfully submitted,

MACKIE WOLF ZIENTZ & MANN, P.C.
Parkway Office Center, Suite 900
14160 Dallas Parkway

Dallas, TX 75254
Phone: (214) 635-2650
Facsimile: (214) 635-2686
Email: swu@mwzmlaw.com

By: /s/ Stephen Wu
Stephen Wu (Bar No. 24042396)

Michael W. Zientz (Bar No. 24003232)
Jessica L. Holt (Bar No. 24078680)
Stephen Wu (Bar No. 24042396)
Chelsea Schneider (Bar No. 24079820)

ATTORNEY FOR CREDITOR

Certificate of Service

I, Stephen Wu, do hereby certify on May 25, 2021, a copy of this motion was served on the persons listed below in the manner indicated.

By: /s/ Stephen Wu

Michael W. Zientz (Bar No. 24003232)

Jessica L. Holt (Bar No. 24078680)

Stephen Wu (Bar No. 24042396)

Chelsea Schneider (Bar No. 24079820)

Movant's Counsel

Via Pre-Paid U.S. Mail:

Wesley Lewis Brown

21011 Winston Ranch Court

Richmond, TX 77406

Debtor(s)

Via ECF:

Webb M. Jones

5022 Briscoe Street

Houston, TX 77033

Attorney for Debtor(s)

Via ECF:

William E. Heitkamp

Chapter 13 Trustee

9821 Katy Freeway

Ste 590

Houston, TX 77024

Via ECF:

US Trustee